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Candace Havens  
Director

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## MEMORANDUM

**DATE:** April 8, 2011

**TO:** Zoning and Planning Committee of the Board of Aldermen

**FROM:** Candace Havens, Director of Planning and Development  
Jen Molinsky, Interim Chief Planner for Long Range Planning  
Seth Zeren, Chief Zoning Code Official

**RE:** PETITION #154-10, requesting to amend Section 30-1 Definitions, by inserting a new definition of "lot area" and revising the "setback line" definition for clarity.

**CC:** Planning and Development Board  
John Lojek, Commissioner of Inspectional Services  
Marie Lawlor, Assistant City Solicitor

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The purpose of this memorandum is to provide the members of the Zoning and Planning Committee of the Board of Aldermen with technical information and planning analysis to support its decision making process. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the working session.

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### I. Background and Introduction

Petition #154-10 is intended to clarify some of the fundamental definitions that underlie Newton's Zoning Ordinance.

- No definition of "lot area" exists in the Newton Zoning Ordinance, yet a the concept of "lot area" is essential for the function of many of Newton's dimensional zoning requirements, including minimum lot area, open space, lot coverage, and floor area ratio (FAR), among others.
- The existing "setback line" definition is unclear on how setbacks should be drawn with regard to easements, paper streets, and private ways where property rights may extend under a street.

This petition also draws upon the recommendations of the Newton Housing Action Plan Initiative (HAPI) in their 2009 report on “Mixed-Use Friendly Zoning” which specifically identified the question of whether or not the paved easement between Austin and Highland at the City parking lot in the Newtonville village center can be counted as “lot area” even though it is used like a street.

Petition #154-10 was previously taken up by the Committee on July 9, 2010, September 27, 2010, and February 28, 2011.

- In **July 2010**, the Planning Department prepared a memo that discussed Newton’s existing definitions and definitions from other municipalities and made several suggestions. The issue was discussed and docketed for further discussion after the summer recess.
- In **September 2010**, the petition was raised again for discussion and Planning Department staff gave a presentation to the Committee highlighting a) the complexities created by Newton’s private ways and paper streets, easements, and irregular lots, and b) the range of other definitions related to the specifically docketed language also in need of revision in order to create a complete, comprehensible set of regulations for lots and setbacks.
- In **February 2011**, City staff expanded on the previous presentation, offering potential revised language for suggested definition revisions.

## **II. Current Definitions in Context**

Section 30-1, *Definitions*, defines a number of terms used elsewhere throughout the Zoning Ordinance. However, “lot area,” which is the basis for many of the City’s density regulations including Floor Area Ratio (FAR), minimum lot area, lot area per dwelling unit, minimum open space percentage, and maximum lot coverage, is not defined in the ordinance. “Lot area” refers to the total horizontal area between the lot lines (see Figure 1).

“Setback line” relates to the required separation between building and lot lines. The term “setback line” dates to the early days of the Newton Zoning Ordinance; the simpler term “setback” is more common in current zoning practice. According to the definition in Sec. 30-1, “setback line” is the line created by the various setback distances around every lot line. The resulting space inside the larger lot is the area where a structure may be erected (see Figure 2). The setback line describes the perimeter of the area within which a building is allowed. The underlying concept of “setback,” and how it should be measured, though used widely elsewhere in the ordinance, is not defined.

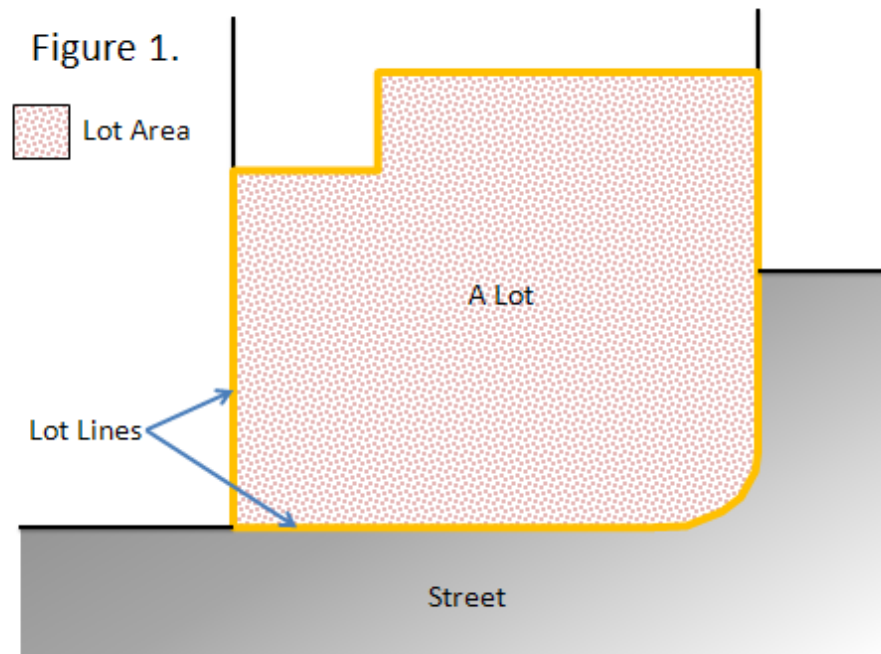


Figure 1: Lot area within the lot lines of a lot.

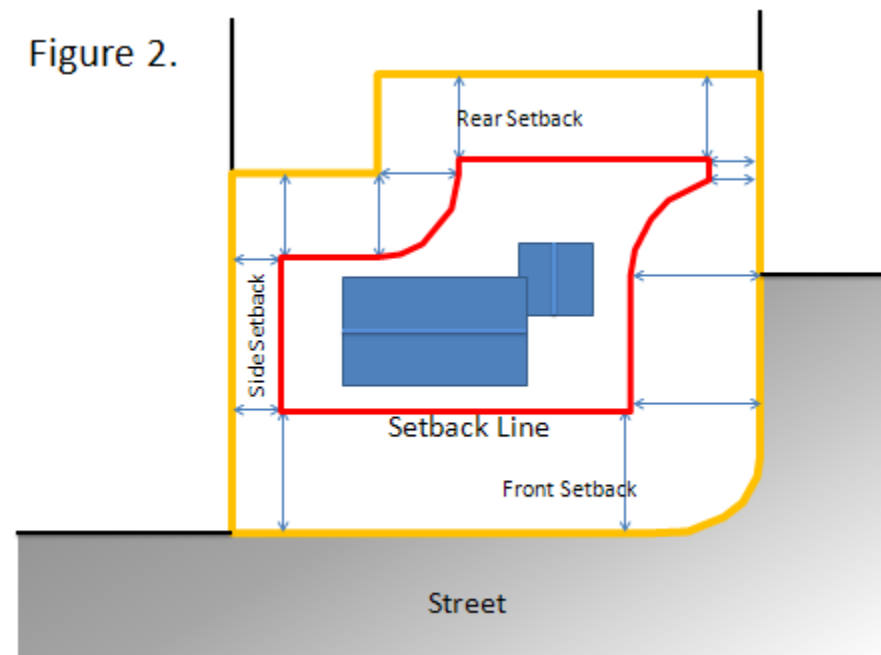


Figure 2: Setback distances from lot lines describe the “setback line” in which the structure must be placed.

### III. Proposal

**Lot Area:** Currently there is no definition of “lot area” in Section 30-1 of the Newton Zoning Ordinance. Below is a proposed definition for “lot area” to be added to Section 30-1.

*“Lot Area: The horizontal area of a lot within the bounding lot lines.”*

The Lot Area definition creates a clear baseline against which FAR, open space, lot coverage and other density and dimensional controls can be measured. Lot area is measured as “horizontal” map distance, rather than as land distance – which, by including slopes and topography, would be a larger number (see Figure 3).

Figure 3.

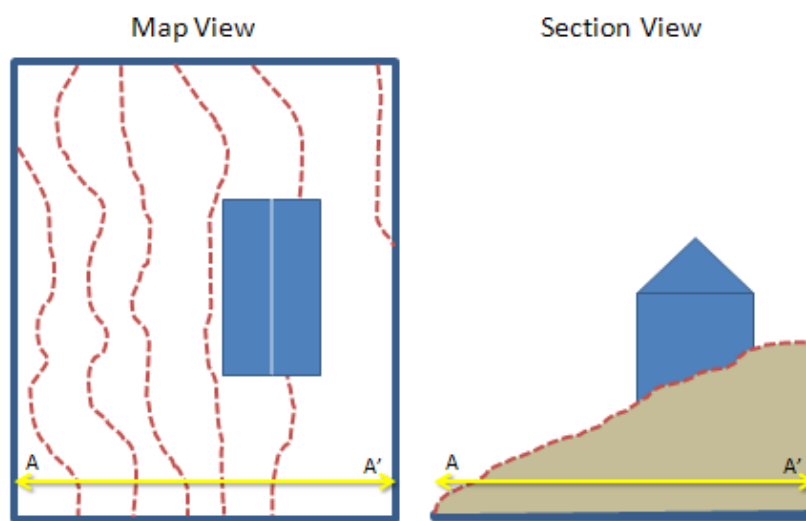


Figure 3: Comparison of map view and section view how lot area must be taken as the horizontal area of the lot, not the topographical area which would be higher on lots with sloping grades.

**Setback Lines:** Setbacks regulations control the separation of buildings from lot lines for aesthetic and safety reasons. The cumulative effect of all the setback distances from each lot line creates what is known as a “setback line,” the line within which any structure may be located. The current definition of Setback Line reads:

*“Setback line: A line equidistant from the lot line which establishes the nearest point to the lot line at which the nearest point of a structure may be erected.”*

There is no underlying definition of “setback” itself or guidance on how to draw it. We propose replacing the setback line definition with the following new definition of “setback”:

*“Setback: The minimum distance measured from each Lot Line to which the nearest portion of a Structure, including outside vestibule or porch, may be located.*

This definition of “setback” would replace that of “setback line.”

## IV. Analysis

The Planning Department's analysis involved the following:

- Considering the general merits and the specific language of the proposed definitions
- Researching how other communities define and measure lot area and setbacks
- Considering what impacts the proposed changes might have on building outcomes in Newton
- Identifying additional related revisions to ensure consistency with proposed language

The Inspectional Services and Law Departments worked closely with the Planning Department in its analysis

### Overview

Planning Department and ISD staff agree that the proposed definition of "lot area" defines a clear baseline for calculations of FAR, lot coverage, and related density regulations. Staff has also considered the relative merits of the "setback line" and "setback" definitions and concluded that the ordinance could be significantly improved by replacing the existing definition with a new "setback" definition and revising all references to setbacks, side yard lines, etc. for consistency.

As an older City, Newton has a range of complex legacies from its history of development including:

- ***Private streets*** – where deeds describe property rights going out to the middle of the road
- ***"Paper streets"*** – created by subdivision plans, but never constructed, may be owned by adjacent properties
- ***Easements and other deed restrictions*** – for access to rear lots, etc.
- ***Aqueducts*** – borders with aqueducts do not count as a "lot line" (meaning no setbacks)
- ***Public footways and open space*** – publicly open parks or pedestrian ways; uncertainty about how to draw setbacks
- ***Irregularly shaped lots***

In consulting with ISD and the Engineering Department, Planning staff determined that there was no confusion in interpreting either lot area or setback lines. ISD and Engineering were in agreement that under no circumstances, even with a private way owned to the center line by an adjacent lot, would the "lot line" for the purposes of defining lot area or setbacks be drawn in the street. Similarly, ISD and the Engineering Department concur that easements do not affect the calculation of lot area or the measurement of setbacks, though building over an easement may be limited by the terms of the easement itself.

In researching the proposed items in the docket language a number of related issues were uncovered:

- The borders between a lot and aqueduct land do not count as lot lines (and therefore do not draw setbacks).
- The definition of "corner lot" requires front setbacks from lot lines adjoining public open space.
- Lots are legally allowed to draw frontage along a footpath open to the public as in Oak Hill - should front setbacks be required along footpaths, or side/rear setbacks?
- In the case of irregularly-shaped lots, the ordinance currently provides little guidance for interpreting which setback must be drawn from which lot line.

### **Comparison with surrounding communities**

In considering the proposed definitions and related issues we considered the zoning regulations of neighboring communities and referenced the APA Planner's Dictionary (2004), which brings together a number of example definitions from around the country for each concept. The language of the proposed definitions is derived from examples in the Planner's Dictionary. We consulted the zoning ordinances of surrounding municipalities to see how setbacks were regulated. For example, Waltham and Needham use "setback," and not "setback line," while Cambridge and Brookline use a mixture of "yard" and "setback."

### **Impacts of proposed change**

The proposed definition changes would have no impacts on building outcomes in Newton and serve only to clarify and reinforce existing interpretations.

### **Consistency with the ordinance**

The following list consists of sections where Ordinance language which Planning staff recommend be made consistent with the proposed "setback" definition. The term "yard" is frequently used throughout the ordinance, despite lacking any definition. In addition to replacing the term "setback line," instances of "side yard line," and so forth, be revised as appropriate.

- 30-15(b)(1) – provides relief in frontage for houses around cul-de-sacs, uses "setback line"
- 30-15(g) – Traffic visibility around corners, uses "setback line"
- 30-15(k) – Open Space Preservation Development, uses both "setback line" and "side/rear yard line" (currently nowhere defined in the ordinance)
- 30-15 Table 2, footnote 1 – uses "side yard setbacks"
- 30-15 Table 3, footnote 2 – uses "side yard setbacks"
- 30-15 Table 4, footnote 4 – uses "side yard setbacks"
- 30-16(a) and (b) – Dormitories,, uses "front yard setback" etc.
- 30-18A(c)(6) and (e)(10) – Telecommunications, uses "rear yard"
- 30-19(d)(1) – required parking for single and two family dwellings, uses "side yard"
- 30-26(h)(1) – conditions for approving of a special permit, uses "required yards"

### **V. Recommendations**

The Planning Department recommends adoption of the proposed language as proposed in this memorandum. The new definitions will make the Zoning Ordinance clearer and more consistent. The Planning Department recommends that, in addition to the proposed revised definitions, the Committee adopt the related changes that together clarify and improve the consistency of setback regulations throughout the Ordinance.

In researching and considering the proposed recommendations above, a number of other issues came to the fore. These topics have been addressed in previous presentations and are summarized here. The Planning Department and ISD together note these as areas of the ordinance where significant improvement could be made and recommends that specific remedies be advanced to the Committee in the near future:

- **Lot** – There is currently no definition of “lot.”
- **Lot line** – The definition of “lot line” is the foundation of setback regulations. The current definition is unclear on which lot lines should draw which setbacks and also has an exception for aqueducts which seems more appropriately grouped with the regulations in Section 30-15.
- **Setback regulations** – The regulation of setbacks in Section 30-15 is spread between subsections (d), (e), and (f), along with Tables 1-4. We recommend consolidating and reorganizing the exceptions and modifications to the setback rules contained in (d)-(f) and incorporating “intents” with each regulation to clarify interpretation.
- **Lot types** – Three lot types are defined in the Newton Zoning Ordinance: “interior,” “corner,” and “rear.” However, the definition of “rear lot” is located in the regulations of Section 30-15(r), not with the Definitions of Section 30-1. The definitions of both corner lot and rear lot contain what amount to stealth regulations (such as drawing front setbacks from public open space, as required under the corner lot definition). The clarity and consistency of the ordinance could be improved by reorganizing all three definitions into Section 30-1, moving regulatory components back to the regulations in Section 30-15, and simplifying the language.